



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 22, 2021

Ms. Monica Hernandez  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2020-10804A

Dear Ms. Hernandez:

This office issued Open Records Letter No. 2020-10804 (2020) on April 13, 2020. Since that time, we have received new information that affects the fact on which that ruling was based. *See Gov't Code §§ 552.306, .352.* Thus, we hereby withdraw the prior ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2020-10804. *See generally id.* § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). Your request was assigned ID# 866706 (Ref. No. W301747-012120).

The City of San Antonio (the "city") received a request for all proposals submitted in response to a specified request for proposals. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of New Earth, Inc. ("New Earth") and Texas Landfill Management, LLC ("TLM"). Accordingly, you state, and provide documentation demonstrating, the city notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from TLM. We have considered the submitted argument and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons,

if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from New Earth explaining why the information at issue should not be released. Thus, we have no basis to conclude New Earth has a protected proprietary interest in the information at issue. *See id.* § 552.110. Therefore, the city may not withhold any portion of the submitted information on the basis of any proprietary interest New Earth may have in it.

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). TLM argues some of its information at issue consists of trade secrets subject to section 552.110(b). Upon review, we find TLM has demonstrated the information at issue, which consists of client reference information, constitutes trade secrets. Accordingly, to the extent it is not publicly available on TLM's company website, the city must withhold the client reference information we marked under section 552.110(b) of the Government Code. However, to the extent the marked client reference information is publicly available on TLM's company website, we find the city may not withhold such information under section 552.110(b) of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a government body is confidential.”<sup>1</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977).

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent it is not publicly available on TLM's company website, the city must withhold the client reference information we marked under section 552.110(b) of the Government Code. The city must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The city must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/rm

Ref: ID# 866706

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 2 Third Parties  
(w/o enclosures)